

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JULIA LUIZZA VILLANUEVA
and ISAAC MICHAEL VILLANUEVA, Minors.

AHREN TASZREAK and ANNE TASZREAK,

Petitioners-Appellees,

v

JOSE EDWARD-FAVELA VILLANUEVA,

Respondent-Appellant.

UNPUBLISHED

July 12, 2005

No. 259855

Eaton Circuit Court

Family Division

LC No. 04-015234-NA

Before: Fitzgerald, P.J., and Meter and Owens, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor children under MCL 712A.19b(3)(f), (g), and (h). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews that finding under the clearly erroneous standard. MCR 3.977(J). If the petitioner establishes a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests.

Matters affecting the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights. By not appealing the initial dispositional order, respondent lost his right to challenge the court's exercise of jurisdiction. *In re Hatcher*, 443 Mich 426, 438-439, 444; 505 NW2d 834 (1993); *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005).¹

¹ Nonetheless, our review of the record reveals that multiple statutory bases supported the trial court's assumption of jurisdiction. See MCL 712A.2(b)(1), (2), and (5).

The trial court did not clearly err when it terminated respondent's parental rights under MCL 712A.19b(3)(f)² and (g)³ because there was clear and convincing evidence that in the two years before the filing of the petition respondent did not regularly visit, contact, communicate, and support the children when able. The children have a guardian under the Estates and Protected Individuals Code, MCL 700.1101 *et seq.* Much evidence showed that respondent failed to provide proper care and custody for the children and that he would not be able to do so within a reasonable time. Respondent is incarcerated until at least November 2006,⁴ has not seen the children since May 2003, and provided no support in 2002, 2003, or 2004. A children's protective services worker testified that the children were physically abused by respondent and that, given respondent's history of criminal activity, parole violations, drug abuse and domestic abuse, after respondent's release it would take substantial time before unsupervised visitation could occur.⁵

Once the trial court finds at least one statutory ground for termination by clear and convincing evidence, the court must order termination of parental rights unless the court finds that termination is clearly not in the child's best interests. MCL 712A.19b(5); *Trejo, supra* 354. The evidence did not show that termination was not in the minor children's best interests. MCL 712A.19b(5).

Lastly, respondent argues that his constitutional rights of confrontation, due process, and the effective assistance of counsel were violated by his absence at the deposition of the

² MCL 712A.19b(3)(f) provides a ground for termination of parental rights when:

The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and both of the following have occurred:

(i) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.

(ii) The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition.

³ MCL 712A.19b(3)(g) provides a ground for termination of parental rights when:

The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

⁴ In his brief respondent cites the Department of Corrections website as support for his contention that his earliest parole date is September 23, 2006. This evidence is not of record.

⁵ Because only one statutory ground for termination is necessary, we need not address respondent's argument that MCL 712A.19b(3)(h) was not established by clear and convincing evidence.

children's mother, Sarah Hunt.⁶ The Sixth Amendment right of confrontation does not apply in child protective proceedings, which are civil in nature. *In re Brock*, 442 Mich 101, 116; 499 NW2d 752 (1993).⁷ Although respondent is entitled to the effective assistance of counsel in a termination proceeding, *In re Nash*, 165 Mich App 450, 458; 419 NW2d 1 (1987), using the criminal appeal as an analogy, a parent is denied the effective assistance of counsel when counsel's performance was defective, prejudiced the parent, or deprived the parent of a fair trial. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *Nash, supra*. Here, respondent's counsel requested respondent's presence at the deposition, but he had no meritorious grounds for objecting to the court's ruling. Further, any error would not have been outcome determinative because, even without Hunt's testimony, clear and convincing evidence was presented to establish the statutory grounds for termination.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Patrick M. Meter

/s/ Donald S. Owens

⁶ Hunt's parental rights were also terminated in a previous proceeding. Hunt and respondent never married.

⁷ But respondent was present for all of the transcribed proceedings except for the deposition, and his attorney did apparently ask Hunt the questions suggested by respondent.